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- DANIEL B. GRAVES -

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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DANIEL B. GRAVES,)

Plaintiff,) NO. 7 Civ. 5471

-vs-) (BSJ) (KNF)

DEUTSCHE BANK SECURITIES, INC.,)

Defendant.)

----- X

DATE: January 10, 2011

TIME: 9:02 a.m.

Deposition of DANIEL B. GRAVES, held

at the offices of Sidley Austin, 787 Seventh

Avenue, New York, New York, pursuant to Notice,

before Hope Menaker, a Shorthand Reporter and

Notary Public of the State of New York.

ELISA DREIER
REPORTING CORP.

950 Third Avenue Telephone: 212-557-5558
New York, New York 10022 Fax: 212-557-0050
Email: production@courtreportingedrc.com

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1 - DANIEL B. GRAVES -

2 A P P E A R A N C E S

3

4 LAW OFFICE OF RICHARD T. SEYMOUR, P.L.L.C.

5 Attorneys for the Plaintiff

6 1150 Connecticut Avenue N.W., Suite 900

7 Washington, D.C. 20036-4129

8 BY: RICHARD T. SEYMOUR, ESQ.

9

10 SIDLEY AUSTIN, LLP

11 Attorneys for the Defendant

12 787 Seventh Avenue

13 New York, New York 10019

14 BY: CLIFFORD H. FONSTEIN, ESQ.

15 JOANNE SELTZER, ESQ.

16 CAROL ANN STERLING, ESQ.

17

18

19 ALSO PRESENT: Albert Santana, Videographer

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1 - DANIEL B. GRAVES -

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3 IT IS HEREBY STIPULATED AND AGREED by and
4 between the attorneys for the respective parties
5 herein, that filing and sealing be and the same
6 hereby waived.

7

8 IT IS FURTHER STIPULATED AND AGREED that all
9 objections, except as to the form of the question,
10 shall be reserved to the time of trial.

11

12 IT IS FURTHER STIPULATED AND AGREED that the
13 within deposition may be sworn to and signed
14 before any officer authorized to administer an
15 oath, with the same force and effect as if signed
16 and sworn to before the Court.

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1 - DANIEL B. GRAVES -

2 THE VIDEOGRAPHER: This is Tape
3 Number 1 in the videotaped deposition of
4 Daniel Graves in the matter of Daniel Graves,
5 Plaintiff, against Deutsche Bank Securities,
6 Defendant, in the United States District
7 Court, Southern District of New York, Case
8 Number 07 Civ. 5471.

9 This deposition is being held at
10 Sidley Austin, 787 Seventh Avenue, New York,
11 New York on January 10, 2011, at approximately
12 9:02 a.m.

13 I'm Albert Santana from the firm of
14 Elisa Dreier Reporting Corp., and I'm the
15 legal video specialist.

16 The court reporter is Hope Menaker in
17 association with Elisa Dreier Reporting Corp.

18 For the record, will counsels please
19 introduce themselves.

20 MR. FONSTEIN: My name is Cliff
21 Fonstein on behalf of Defendant Deutsche Bank
22 Securities Inc.

23 MS. SELTZER: Joanne Seltzer on
24 behalf of Deutsche Bank Securities Inc.

25 MR. SEYMOUR: Richard Seymour on

1 - DANIEL B. GRAVES -

2 behalf of Daniel Graves.

3 THE VIDEOGRAPHER: Now will the court
4 reporter please swear the witness.

5

6 DANIEL B. GRAVES, called as a witness, having
7 been duly sworn on January 10, 2010, by a Notary
8 Public, was examined and testified as follows:

9

10 EXAMINATION BY MR. FONSTEIN:

11 Q. Good morning, Mr. Graves.

12 A. Morning.

13 Q. Have you ever been deposed before?

14 A. Yes.

15 Q. How many times?

16 A. I believe it's less than five.

17 Q. Less than five.

18 A. I don't know the exact number.

19 Sorry.

20 Q. And could you please describe to me
21 the matters in which you have been deposed on
22 those five or so occasions?

23 A. I was deposed in a matter relating to
24 Deutsche Bank and Adelphia a few years ago.

25 I believe that I was deposed in a

22

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2 A. Vice president.

3 Q. And were you promoted during the
4 course of your five years at Merrill Lynch?

5 A. I was promoted from vice president to
6 director.

7 Q. Any other promotions while you were
8 at Merrill Lynch?

9 A. No.

10 Q. When were you promoted from vice
11 president to director?

12 A. I don't remember the exact date. I'm
13 sorry, Cliff.

14 Q. When -- when you went to Merrill
15 Lynch, what -- what group did you work in?

16 A. In the media investment group for
17 Greg Seibert.

18 Q. And did you have a particular role in
19 the media investment group?

20 A. I worked in a variety of industries.

21 Q. What industries did you work in?

22 A. When I first went there, I worked in
23 what's called U.K. Cable. I had done work in U.K.
24 Cable at Solomon properties, and part of my role
25 and why Mr. Seibert was interested in having me

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2 come to Merrill Lynch was that Merrill Lynch was
3 starting a U.K. Cable practice.

4 When I say "U.K. Cable," I mean the
5 United Kingdom and the cable business that was
6 starting in that country at that time.

7 I worked in other industries as well.
8 I had experience in television broadcasting, in
9 radio broadcasting, and I also worked while I was
10 at Merrill Lynch in the cinema business.

11 Merrill Lynch had a private
12 investment arm that owned the largest theater
13 company in the country at the time. It was a
14 company called United Artists Theater Circuit, and
15 I worked on the restructuring and the
16 recapitalization of that.

17 In addition, I worked on, to my
18 recollection, the only IPO initial public offering
19 in the cinema business during the '90s, and that
20 was for a company called Carmike Cinemas.
21 Carmike, C-A-R-M-I-K-E, Cinemas.

22 So I worked in the cinema business in
23 addition to the TV and the radio business and the
24 U.K. Cable business as well.

25 Q. When -- when you were at Merrill

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2 Lynch, did you -- you were the head of the U.S.
3 broadcasting practice at Merrill Lynch; is that
4 correct?

5 A. When I first went there, I wasn't.
6 But I had had some success at Merrill Lynch, and
7 Merrill Lynch did not have a broadcasting practice
8 at the time. So Mr. Seibert said, Why don't I
9 make you had the head of the broadcasting practice
10 and we'll try to increase our clients and our
11 revenues from TV and radio companies.

12 So the answer to your question is
13 yes.

14 Q. As the head of Merrill Lynch's U.S.
15 broadcasting practice, who worked for you?

16 A. As a director and the head of the
17 media broadcasting practice, I would typically
18 have vice presidents and associates and analysts
19 that worked on our teams.

20 Q. As -- as head of the U.S.
21 broadcasting practice for Merrill Lynch, what were
22 some of your major broadcasting clients?

23 A. Some of the major broadcasting
24 clients were Clear Channel Communications,
25 Infinity Broadcasting. Those two are primarily

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2 radio companies.

3 On the TV side, Allbritton
4 Communications was a major client of mine. On --
5 also on the TV side a company called Hearst Argyle
6 Television is a major TV company and was a client
7 of mine. There were a number of others.

8 Q. While you were at Merrill Lynch, is
9 it fair to say that most of your focus was on the
10 broadcasting practice that you were in?

11 A. No. I -- I was a -- a banker that
12 worked in a broad number of areas. For example, I
13 didn't mention that I worked on Tribune Company
14 while I was at Merrill Lynch. Tribune Company
15 happened to have some TV and radio properties, but
16 they were also one of the largest newspaper
17 companies in the country.

18 So I worked in a variety of
19 industries. I worked in radio, in television,
20 cinemas as I mentioned, newspaper. And I
21 wasn't -- I didn't work just in TV and radio
22 broadcasting. I worked in other industries.

23 Q. I -- I didn't -- my question was not
24 whether you just worked in TV and radio
25 broadcasting, but my question was, is it fair to

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2 say as head of the U.S. broadcasting business at
3 Merrill Lynch, is it fair to say that most of your
4 clients were in the broadcasting area?

5 A. I think it's fair to say that most of
6 my clients were, when you count up the number of
7 clients. But that doesn't mean that I didn't work
8 in other areas. I was --

9 Q. I'm not saying that.

10 A. Okay.

11 Q. You mentioned Tribune was a client?

12 A. Yes.

13 Q. When you worked for Tribune, did the
14 work you did at Merrill Lynch involve Tribune's
15 television and broadcasting units?

16 A. We did work on a corporate level
17 which would include all of Tribune. Tribune
18 Company out of Chicago is a major entertainment
19 company. They have TV, radio, newspapers, as I
20 mentioned.

21 At the time they had magazines; they
22 were very active in cable programming. Their
23 major cable programming asset is WGN, and they had
24 interests in other businesses as well.

25 So when we worked on behalf of

1 - DANIEL B. GRAVES -

2 Tribune corporation, we were working across media
3 industries because Tribune was a diversified media
4 company. I also did work with respect to their TV
5 and radio as well.

6 Q. Your answer confused me to some
7 extent because --

8 A. I'm sorry.

9 Q. -- you used the pronoun "we" and you
10 used the pronoun "I." I'm curious as to what you
11 did with respect to Tribune.

12 Did you work in any other sector of
13 Tribune other than the broadcasting sector?

14 A. I worked on Tribune corporation which
15 included all the sectors that I mentioned.

16 Q. Now, you -- you worked with -- you
17 worked closely with Christopher Johnson at Merrill
18 Lynch; is that correct?

19 A. We worked on a number of accounts
20 together, yes.

21 Q. And could you explain to me what the
22 relationship was with Mr. Johnson at Merrill
23 Lynch?

24 A. The relationship with Mr. Johnson at
25 Merrill Lynch is very similar to the relationship

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2 individuals. So if you want to ask Mr. Byrne and
3 Mr. Gahan, I don't know if they will be aware of
4 my work at Merrill Lynch, but they would be
5 someone else that you would ask.

6 Q. And how is it that you became
7 employed by Bankers Trust? Were you looking for a
8 job? Did they call you? Explain to me what
9 happened.

10 A. My recollection of what happened was
11 in the fall of and early winter of 1998, Merrill
12 Lynch, and with me as what's called the
13 relationship manager or RM, was the lead manager
14 on two transactions.

15 The first was an equity offering for
16 Clear Channel Communications, and the second was
17 the IPO for Infinity Broadcasting. These two
18 companies, as I mentioned before, were very large
19 radio companies at the time, perhaps the largest
20 radio companies in the business. And these were
21 very important offerings, and Merrill Lynch was
22 the lead manager.

23 On both of those offerings, Bankers
24 Trust Alex Brown was a part of the manager group.
25 And so during those two transactions, I got

1 - DANIEL B. GRAVES -

2 substantial exposure to Jeffrey Amling and Drew
3 Marcus.

4 My recollection is that at one of the
5 lunches -- and I can't remember whether it was
6 Clear Channel or the Infinity offering -- Drew
7 mentioned to me, Why don't you come work for us.

8 And I said I would be interested in
9 hearing what you had to say, and from there I
10 believe that Mr. Amling followed up.

11 Q. So you -- you didn't have a
12 headhunter or anything?

13 A. No.

14 Q. Did -- in your discussions with Drew
15 or Mr. Amling, did either of them explain to you
16 what Bankers Trust was looking for?

17 A. In my conversations with Jeff Amling,
18 that I can recall, Jeff was looking for me to
19 broaden the account practice that Bankers Trust
20 Alex Brown had. At the time, they were heavily
21 focused on radio and did not have a deep
22 publishing newspaper or television practice.
23 Frankly, I think that they were impressed with the
24 lead manager wins that we had on Infinity and on
25 Clear Channel.

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2 remember whether Mr. Amling ever expressed
3 interest in this, the time that I moved from
4 Bankers Trust Alex Brown was right in the middle
5 of the preparation for the IPO.

6 And the Salem Communications
7 executives, who were also the shareholders, moved
8 the lead managed role from Merrill Lynch to
9 Bankers Trust Alex Brown after I -- I moved from
10 Merrill Lynch to Bankers Trust Alex Brown.

11 So what I'm saying is that I think
12 there could have been some interest on Jeff's part
13 with respect to the additional revenues and
14 prestige of moving the lead manager role of Salem
15 Communications from Merrill Lynch to Bankers Trust
16 Alex Brown.

17 Q. I appreciate your answer, although my
18 question was what Mr. Amling or Mr. Marcus said to
19 you or not with respect to their motivation.

20 You mentioned that Mr. Amling said he
21 was interested in expanding several sectors
22 including the TV broadcasting.

23 What -- what did he say on that
24 subject?

25 A. I don't remember exactly what he

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2 said, but my general recollection is that they
3 didn't have very many TV accounts and they would
4 like me to come and cover the TV accounts that I
5 had and some more.

6 Q. And in terms of their radio
7 broadcasting, did Bankers Trust have many radio
8 broadcasting accounts?

9 A. Yes.

10 Q. What accounts?

11 A. They -- as I mentioned, they worked
12 on Infinity Broadcasting and Clear Channel as did
13 I at Merrill Lynch. They worked on Hispanic
14 broadcasting, and I worked on that at Merrill
15 Lynch. They had many radio accounts, just as I
16 did at Merrill Lynch.

17 Q. The -- did you talk about what
18 accounts, TV broadcasting accounts, you might be
19 able to take with you to Bankers Trust?

20 A. As I recall, I gave Jeff a list of
21 the relationships that I had in TV and radio and
22 newspaper and a lot of other areas.

23 I don't remember saying it exactly,
24 but I believe that I would have told Jeff that
25 these are relationships that I had and that I had

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2 a good chance of continuing those relationships
3 with those people and those companies when I moved
4 to Bankers Trust Alex Brown.

5 Q. With the Infinity Broadcasting IPO
6 that you mentioned, you said that was fairly
7 large?

8 A. Yes.

9 Q. Was that one of the largest
10 transactions you had at Merrill Lynch?

11 A. Yes.

12 Q. Was it the largest transaction you
13 did at Merrill Lynch?

14 A. I -- I believe it might have been.

15 Q. You also mentioned --

16 A. It was the largest IPO that I did.

17 Q. You also mentioned an equity offering
18 for Clear Channel.

19 Was that fairly large?

20 A. My recollection is that it was large.

21 Q. Was that one of the largest
22 transactions you had at Merrill Lynch?

23 A. It was one of the largest equity
24 transactions that I had at Merrill Lynch.

25 MR. FONSTEIN: This will be 3.